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| APPLICATION NO.        | FIL         | ING DATE   | FIRST NAMED INVENTOR  Jeffrey Burbank | ATTORNEY DOCKET NO.     | CONFIRMATION NO. |
|------------------------|-------------|------------|---------------------------------------|-------------------------|------------------|
| 09/513,910             | 0:          | 2/25/2000  |                                       | 9313.16739-1            |                  |
| 21890                  | 7590        | 01/10/2003 |                                       |                         |                  |
| PROSKAU                | ER ROSE     | ELLP       | EXAMINER                              |                         |                  |
| PATENT DI<br>1585 BROA | DWAY        |            | BIANCO, PATRICIA                      |                         |                  |
| NEW YORK               | L, IN Y 100 | 130        |                                       | ART UNIT PAPER NUMBER   |                  |
|                        |             |            |                                       | 3762                    | ın               |
|                        |             |            |                                       | DATE MAILED: 01/10/2003 | 10               |

Please find below and/or attached an Office communication concerning this application or proceeding.

|  | Application No.   | Applicant(s)  |  |  |  |  |
|--|---|---|--|--|--|--|
| 055 4-4' 0 0   | 09/513,910  | BURBANK ET AL.  |  |  |  |  |
| Office Action Summary  | Examiner  | Art Unit  |  |  |  |  |
|  | Patricia M Bianco   | 3762  |  |  |  |  |
| The MAILING DATE of this communication app<br>Period for Reply   | ears on the cover sheet with the c  | orrespondence address   |  |  |  |  |
| A SHORTENED STATUTORY PERIOD FOR REPLY THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply if NO period for reply is specified above, the maximum statutory period we Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).  Status | 86(a). In no event, however, may a reply be time within the statutory minimum of thirty (30) days illiapply and will expire SIX (6) MONTHS from cause the application to become ABANDONE. | nely filed s will be considered timely. the mailing date of this communication. |  |  |  |  |
| 1) Responsive to communication(s) filed on 25 F  | ebruary 2002  |   |  |  |  |  |
| 2a) This action is <b>FINAL</b> . 2b) ⊠ Thi  | s action is non-final.  |   |  |  |  |  |
| 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  |   |   |  |  |  |  |
| 4)⊠ Claim(s) 1-36 is/are pending in the application.   |   |   |  |  |  |  |
| 4a) Of the above claim(s) is/are withdraw  |   |   |  |  |  |  |
| 5) Claim(s) is/are allowed.  |   | •   |  |  |  |  |
| 6) Claim(s) is/are rejected.   |   |   |  |  |  |  |
| 7) Claim(s) is/are objected to.  |   |   |  |  |  |  |
| 8)⊠ Claim(s) <u>1-36</u> are subject to restriction and/or e   | lection requirement   |   |  |  |  |  |
| Application Papers   |   |   |  |  |  |  |
| 9) The specification is objected to by the Examiner  |   |   |  |  |  |  |
| 10)☐ The drawing(s) filed on is/are: a)☐ accept  | ted or b)⊡ objected to by the Exar  | niner.  |  |  |  |  |
| Applicant may not request that any objection to the  | drawing(s) be held in abeyance. Se  | ee 37 CFR 1.85(a).  |  |  |  |  |
| 11) The proposed drawing correction filed on   | is: a) ☐ approved b) ☐ disappro   | ved by the Examiner.  |  |  |  |  |
| If approved, corrected drawings are required in repl   | ly to this Office action.   |   |  |  |  |  |
| 12) The oath or declaration is objected to by the Exa  | miner.  |   |  |  |  |  |
| Priority under 35 U.S.C. §§ 119 and 120  |   |   |  |  |  |  |
| 13) Acknowledgment is made of a claim for foreign  | priority under 35 U.S.C. § 119(a)   | -(d) or (f).  |  |  |  |  |
| a) ☐ All b) ☐ Some * c) ☐ None of:   |   |   |  |  |  |  |
| 1. Certified copies of the priority documents  | have been received.   |   |  |  |  |  |
| 2. Certified copies of the priority documents  | have been received in Application   | on No   |  |  |  |  |
| 3. Copies of the certified copies of the priori application from the International Bure  | eau (PCT Rule 17.2(a)).   | · ·   |  |  |  |  |
| * See the attached detailed Office action for a list of  | •   |   |  |  |  |  |
| 14) Acknowledgment is made of a claim for domestic   |   | •   |  |  |  |  |
| <ul> <li>a) ☐ The translation of the foreign language prov</li> <li>15)☒ Acknowledgment is made of a claim for domestic</li> </ul>   |   |   |  |  |  |  |
| Attachment(s)  | 1 1   |   |  |  |  |  |
| 1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s)  | 5) Notice of Informal P   | (PTO-413) Paper No(s) atent Application (PTO-152) bequirement                   |  |  |  |  |
| 5. Patent and Trademark Office   |   |   |  |  |  |  |

## **DETAILED ACTION**

## Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- Claims 1-5 & 21-28, drawn to a system for and method for performing hemofiltration including a waste path with an air break, classified in class 604, subclass 5.04.
- II. Claims 6-12 & 29-36, drawn to a system for and method for performing hemofiltration including a replacement fluid path including a sterilization filter, classified in class 210, subclass 650.
- III. Claims 13-20, drawn to a hemofiltration system including a controller a chassis, and an integrated fluid circuit mounted on the chassis, classified in class 210, subclass 739.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions they have different effects and functions, invention I is used to remove waste and invention II is used to supply a replacement fluid.

Inventions I and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP §

806.04, MPEP § 808.01). In the instant case the different inventions they have different modes of operation, invention II requires a chassis mounted circuit under controller operation.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement may be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

## Conclusion

Any inquiry concerning the rejections contained within this communication or earlier communications should be directed to examiner Tricia Bianco whose telephone number is (703) 305-1482. The examiner can normally be reached on Monday through Fridays, alternating Fridays off, from 9:00 AM until 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The official fax numbers for the organization where this application or proceeding is assigned is (703) 872-9302 for regular communications and for After Final communications (703) 872-9303.

Tricia Bianco Patent Examiner Art Unit 3762

pmb SUB WW January 8<sup>th</sup>, 2003